

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	1594.00
COMPLAINT INVESTIGATOR:	Roger Hubbard
DATE OF COMPLAINT:	July 3, 2000
DATE OF REPORT:	August 10, 2000
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	September 20, 2000

COMPLAINT ISSUES:

Whether the Wawasee Community School Corporation and the North Central Indiana Special Education Cooperative violated:

- 511 IAC 7-12-1 with regard to the school's alleged failure to implement the student's individualized education program (IEP) as written.
- 511 IAC 7-10-3 with regard to the school's alleged failure to conduct an initial evaluation and convene a case conference committee within 40 instructional days from the date of the parents' written consent.
- 511 IAC 7-10-3 with regard to the school's alleged failure to conduct a speech evaluation and convene a case conference committee with 40 instructional days from the parent's written consent on March 28, 2000.
- 511 IAC 7-10-3(o) with regard to the school's alleged failure to conduct a comprehensive, multidisciplinary team re-evaluation of the student at least every 36 months.
- 511 IAC 7-12-1(j) with regard to the school's alleged failure to utilize the case conference committee to develop a behavioral intervention plan for the student, instead unilaterally developing and implementing a school-designed behavioral intervention plan.
- 511 IAC 7-12-2(h) with regard to the school's alleged failure to provide academic and extracurricular services and activities in a manner that allowed a student with a disability equal opportunity to participate in such things as meal and recess periods.
- 511 IAC 7-13-5(p) with regard to the school's alleged failure to provide psychological services as a related service even though such service has been recommended by the school.
- 511 IAC 7-12-1(g) with regard to the school's alleged failure to convene a case conference committee meeting at the parent's request.
- 511 IAC 7-3-23 with regard to the school's failure to provide the student with a free appropriate public education.

During the course of the investigation, an additional was identified as to whether the school and the special education planning district violated:

- 511 IAC 7-4-4 with regard to the school's alleged failure to identify and evaluate a student enrolled in a private school within the school's boundaries.

An extension of time to complete the investigation report was granted due to the complexity of the identified issues and the school's need for additional time to compile and submit documentation. The report deadline was extended to August 10, 2000.

FINDINGS OF FACT:

1. The student (the "Student") is nine years old and is eligible for special education and related services due to an emotional disability.
2. Head Start referred the Student to the North Central Indiana Special Education Cooperative (NCI) in January 1996 for an evaluation. An evaluation was arranged but had to be canceled when the Student moved out of the state. The parent was told to reschedule the evaluation if the Student returned. Upon the Student's return in August 1996, the parent enrolled the Student in a private school. Early in the school year, the parent expressed concern to the private school staff about the student's lack of learning progress. The private school staff advised the parent that a medical evaluation should be their first step. In November, 1996, the private school received notice that the parent had referred the student to NCI for an educational evaluation. At that time the private school told the parent that, before NCI could get involved, they had to rule out any medical problems and that any medication prescribed had to be tried for six weeks. Shortly thereafter, the parent met with staff from the private school and from NCI. NCI staff advised the parent that the medical questions had to be addressed before the evaluation. The Student transferred to the public school February 3, 1997. No educational evaluation was conducted by NCI during the 1996-1997 school year.
3. On September 18, 1997, a general education intervention plan was developed for the Student. On December 16, 1997, the Student was determined to be a Student with a disability under Section 504, and an accommodation plan was written and implemented. The parent provided written consent for an educational evaluation on March 18, 1998. The evaluation was conducted and the case conference committee meeting convened on May 18, 1998, at which time the student was determined eligible as a student with an emotional handicap.
4. According to the individualized education program (IEP) dated May 18, 1998, the Student was to receive general education instruction for most of the instructional day, with special education or related services provided in a resource room for part of the school day. The Student was to spend approximately 95% of his instructional week in the general education classroom and special education resource services the remainder of the time.
5. Based on the second grade teacher's report, dated October 1998, the Student was in the general education setting for 82% - 88% of the day and in the resource room for 12% - 18% of the day depending upon the day of the week.
6. On March 18, 2000, the parent provided written consent for a speech/language evaluation. The teacher of record did not forward the consent form to the speech/language pathologist due to the possibility of the Student withdrawing from school. No speech evaluation was done.
7. The Student's last multidisciplinary evaluation was conducted on May 12, 1998. A triennial reevaluation must be conducted by May 12, 2001.

8. At the Student's initial case conference on May 18, 1998, the committee agreed that a behavioral intervention plan was needed and that the CCC would convene in September 1998, to develop such a plan. Although the CCC convened via telephone on September 11, 1998, there was no discussion of a behavioral intervention plan. The sole purpose of the September CCC was to determine the Student's need for speech therapy. A behavior plan was developed on November 2, 1998. There is no documentation that the parent was involved in the development of the plan; however, the parent did sign the plan on November 2, 1998, agreeing to its appropriateness. New behavioral intervention plans were developed on May 18, 1999, and March 28, 2000.
9. For certain misbehavior, the Student was precluded from all or part of his recess time on a particular day or days. The Student's behavior plan dated November 2, 1998, states progressive interventions, including that the Student will: (1) lose 25 cents, (2) miss 15 minutes of "choice time," (3) miss "choice time" and write a letter of apology, or (4) go to the office. The behavioral intervention plan did not exempt the Student from the classroom policy of loss of recess time for misbehavior.
10. The behavioral intervention plan, attached to the IEP dated May 18, 1999, states that the Student will continue to meet with the guidance counselor in a small group setting. Documentation dated June 4, 1999, indicated that the Student was meeting with the guidance counselor each morning in a small group setting to discuss self-esteem issues. The IEP dated March 28, 2000, states that the Student is to discuss personal feelings and emotions with the EH teacher. Although the parent asserts that the CCC recommended the student receive psychological services, there is no documentation in the CCC reports or the IEP to indicate such a recommendation.
11. The parent asserts that she spoke with the school principal on April 18, 2000, requesting a case conference meeting. The principal does not recall this conversation or the parent's request. There is no written documentation regarding this request. However, a CCC meeting is scheduled for August 9, 2000.

CONCLUSIONS:

1. Findings of Fact #4 and #5 indicate that the Student was to spend 95% of his instructional week in the general education classroom. However, the Student only spent 82% to 88% of the week in the general education classroom. Further, Finding of Fact #8 indicates that at the May 18, 1998 CCC, there was an agreement to reconvene in September, 1998 to develop a behavioral intervention plan for the Student. Although the CCC convened on September 11, 1998, a behavioral intervention plan was not discussed. Therefore, a violation of 511 IAC 7-12-1 is found.
2. Finding of Fact #2 indicates that the school scheduled an evaluation for the Student based on a referral in January, 1996, but it was canceled when the Student subsequently moved out of state. Finding of Fact #3 indicates that the parent gave written consent for an educational evaluation on March 18, 1998. The case conference committee meeting was held on May 18, 1998, which is within the 40 instructional day time line. Therefore, no violation of 511 IAC 7-10-3 is found with respect to these two requests for an educational evaluation.
3. Finding of Fact #6 reflects that the parent provided written consent for a speech evaluation on March 18, 2000. The teacher of record failed to forward the consent form to the speech/language pathologist. Consequently a speech/language evaluation did not occur. Therefore, a violation of 511 IAC 7-10-3 is found with respect to the parent's request for a speech/language evaluation.
4. Finding of Fact #7 indicates that the Student's last multidisciplinary evaluation was conducted on May 12, 1998. The re-evaluation is not due until May 12, 2001. Therefore, no violation of 511 IAC

7-10-3(o) is found.

5. Finding of Fact #8 indicates that a behavioral intervention plan was developed on November 2, 1998. There is no documentation that a CCC was convened to develop the plan or that the parents were involved in the plan's development, even though the parent provided written consent for the plan on the date it was developed. Therefore, a violation of 511 IAC 7-12-1(j) is found.
6. Finding of Fact #9 indicates that the Student had a behavioral intervention plan that did not exempt the Student from the classroom policy of lost recess time for certain misbehavior and that the Student lost some of his recess time due to poor behavior. No violation of 511 IAC 7-12-2(h) is found.
7. Finding of Fact #10 indicates that the Student was meeting with the guidance counselor each morning in a small group to discuss self-esteem issues, not as a related service, but as part of the behavioral intervention plan. There is no documentation of a CCC recommendation for additional psychological counseling. Therefore, no violation of 511 IAC 7-13-5(p) is found.
8. Finding of Fact #11 indicates conflicting information on the parent's verbal request to convene the CCC, and there is no written documentation on the issue. However, a CCC meeting is scheduled for August 9, 2000. Therefore, no violation 511 IAC 7-12-1(g) is found.
9. Findings of Fact #3, #4, #5, #7, #8, #9, and #10 demonstrate that a CCC has convened to determine the Student's eligibility for special education, has developed, reviewed, and revised the Student's IEPs, and developed behavioral intervention plans to address the Student's behavior. The parents consented to the IEPs that the School has implemented. Therefore, no violation of 511 IAC 7-3-23 is found.
10. Finding of Fact #2 indicates that, upon the student's return to Indiana in August, 1996, the student was enrolled in a private school, and in November 1996, the parent requested an educational evaluation. The private school staff met with the parent and advised that medical issues had to be resolved before an evaluation would be conducted. NCI and private school staff met with the parent and advised the parent to address the medical issues first. No evaluation was conducted. Therefore, a violation of 511 IAC 7-4-4 occurred.

The Department of Education, Division of Special Education requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

Wawasee Community School Corporation and the North Central Indiana Special Education Cooperative shall:

1. Conduct a speech/language evaluation and reconvene the CCC by August 29, 2000. The CCC shall determine the Student's eligibility for services as a student with a communication disorder, as well as the need for compensatory educational services in the area of classroom instruction and speech therapy services. Submit a copy of the CCC Report and IEP to the Division no later than September 8, 2000.
2. Review and, if necessary, revise policies, procedures, or related documents that are provided to private schools regarding the evaluation process for students enrolled in private schools. Submit a copy of the documents provided to private schools regarding identification and evaluation, along with an assurance statement that private schools have been advised that there is no medication

prerequisite to an educational evaluation, no later than September 29, 2000.

3. Inservice all appropriate staff regarding the requirements of 511 IAC 7-17-8 that a behavioral intervention plan:
 - a. be developed by the CCC;
 - b. be incorporated into the student's IEP;
 - c. be linked to information gathered through a functional behavioral assessment; and
 - d. be implemented as written.An agenda, any handouts distributed, and a list of inservice participants by name and title shall be submitted to the Division no later than September 29, 2000.

DATE REPORT COMPLETED: August 3, 2000